

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:WR:SCA:SD:GL-805796-00
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date: JUL 25 2000

to: Chief, Special Procedures Branch, Southern California District
Attn: Joann Carr

from: Associate District Counsel, Southern California District, San Diego

subject: [REDACTED]

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By transmittal memorandum of June 19, 2000, you requested this office's opinion as to the relative priority between the Internal Revenue Service and [REDACTED] with respect to certain personal property of the taxpayer.

FACTUAL BACKGROUND

The relevant federal tax liabilities in issue here are Form 941 taxes for the [REDACTED] and [REDACTED] quarters of [REDACTED], assessed [REDACTED] and [REDACTED], respectively. A notice of federal tax lien evidencing these liabilities was recorded in the [REDACTED] County Recorder's office on [REDACTED]. Between the dates of the assessments of these liabilities and the recording of the notice of federal tax lien, [REDACTED]

obtained a judgment against the taxpayer in the [REDACTED] County Municipal Court. The judgment was entered on [REDACTED], and a notice of lien on personal property was recorded in the Secretary of State's office on [REDACTED]. In [REDACTED], Revenue Officer John Black conducted a seizure of all of the taxpayer's tangible personal property. Specifically, the items seized were [REDACTED], [REDACTED], [REDACTED], and other miscellaneous items that can best be described as equipment. Your inquiry concerns whether the federal tax lien primes the personal property judgment lien of [REDACTED].

DISCUSSION

I.R.C. § 6323(a) provides that the "lien imposed by section 6321 shall not be valid as against any . . . judgment lien creditor until notice thereof . . . has been filed by the Secretary." The term "judgment lien creditor" is defined in Treas. Reg. § 301.6323(h)-1(g) as

a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of . . . a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established . . . If under local law levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. (emphasis added)

The emphasized portion of the regulation quoted above spells out the concept of "choateness" and is the same as enunciated by the Supreme Court in United States v. City of New Britain, 347 U.S. 81, 84 (1954). Is the judgment lien of [REDACTED] choate so as to entitle it to priority over a subsequently filed notice of federal tax lien? (There is no question that the identity of the lienor or the amount of the lien have been established.)

Section 697.510(a) of the California Civil Procedure Code provides that "[a] judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State" Cal. Civ. Proc. Code § 697.510(a) (West 1987). With [REDACTED]'s recordation of its judgment in the Secretary of State's office on [REDACTED], a judgment lien was created, pursuant to section 697.530(a),

on all interests in the following personal property that are subject to enforcement of the money judgment against the debtor . . . if a security interest in the property could be perfected under the Commercial Code by filing a financing statement at that time with the Secretary of State: (1) Accounts receivable; (2) Chattel paper; (3) Equipment; (4) Farm products; (5) Inventory . . . ; [and], (6) Negotiable documents of title. Cal. Civ. Proc. Code § 697.530(a) (West 1987).

The judgment lien also attaches to after-acquired interests in the listed personal property, Cal. Civ. Proc. Code § 697.530(b) (West 1987), but does not attach to "[a] vehicle or vessel required to be registered with the Department of Motor Vehicles" Cal. Civ. Proc. Code § 697.530(d)(1) (West 1987). Thus, [REDACTED]'s lien would not reach any of the [REDACTED] seized by Revenue Officer Black. But what about the equipment?

The test for perfection of the judgment lien on the equipment, as set forth in section 697.530(a), is whether a security interest in such equipment could be perfected by filing a financing statement with the Secretary of State. Section 9302(1) of the California Commercial Code states that "[a] financing statement must be filed to perfect all security interests" Cal. Com. Code § 9302(1) (West 1990). The provision goes on to list exceptions to the filing requirement, but none of the exceptions apply here. Security interests in certain types of property may be perfected by taking possession of the collateral--goods, instruments, money, negotiable documents or chattel paper, Cal. Com. Code § 9305 (West 1990), but such property is not at issue here. Thus, because perfection of a security interest in equipment must be accomplished by filing, and because [REDACTED] filed its notice of personal property judgment lien before the recording of the notice of federal tax lien, [REDACTED] meets the definition of "judgment lien creditor" as set forth in

the Treasury Regulation and primes the later filed notice of federal tax lien with respect to the taxpayer's equipment.

Please address any questions to the undersigned at (619)557-6014, ext. 106.

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By:



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